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EXAMINER

ASHBURN, STEVEN L

ART UNIT PAPER NUMBER

3714

DATE MAILED: 10/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/688,441

Applicant(s)

WEBB ET AL.

Examiner

Steven Ashburn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-33 is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 12, 2003 has been entered.

Drawings

The objection to the drawings is withdrawn.

Claim Rejections - 35 USC § 112

The rejection of claims 14- 21 and 24 under 35 U.S.C. 112(1) is withdrawn.

Claim Rejections - 35 USC § 103

Claim 1, 2, 12, 13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barrie, GB 2,144,644 A (Mar. 13, 1985) in view of Kamille, U.S. Patent 5,855,514 (Jan. 5, 1999).

Barrie discloses a gaming machine having player selections over multiple rounds that provides a dramatic narration during which a player makes choices, the outcome of which is governed by chance. *See abstract*. The player choice may result in dramatic scenes on a screen showing that the player has won a reward, has lost, or has his choice of a reward or an opportunity to make a further choice with the possibility of winning a higher reward. *See id*. The individual outcomes are determined with the aid of a random number generator. *See id*.

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Regarding claims 1 and 13: *Barrie* teaches the following features of the claimed invention:

- a. Displaying a plurality of symbols on a display of the gaming device. *See fig. 3(42).*
- b. A plurality of rounds. *See fig. 9, 9(a); p. 2:23-76.*
- c. Means for enabling a player to select one of the symbols in each of the rounds. *See p. 1:42-47.*
- d. A display device operable for displaying the plurality of symbols. *See fig. 1(14).*
- e. A controller operable with the selection means and the display device to randomly assign an item to at least one, a plurality or all of the plurality of symbols, to enable to player to select one of the symbols in each of the rounds, and to provide an award to the player if thee player selects one of the symbols having an assigned item. *See fig. 2; p. 1:48-54, 2:6-22.*
- f. Selecting a prize and providing the prize to the player chooses a symbol having the assigned item. *See id.*

However, *Barrie* does not describe the feature of determining whether to assign an item to at least one, a plurality of, or all of the plurality of symbols and, upon said determination being made, assigning the item to one of said symbols, to a plurality of said symbols, or all of said symbols. The examiner interprets this language to mean that the claimed invention determines the number of symbols to assign an item to. In comparison, *Barrie* determines which symbols to assign a predetermined number of items to. Regardless, as shown below, it would have been obvious to an artisan to modify the gaming device described by *Barrie* to determine the number of symbols to assign an item to.

Kamille discloses an analogous gaming device for playing a selection game. It teaches that it is known in the art to offer games that control the number of prizes awarded using the laws of probability. *See col. 1:55-2:4.* Such a games are commonly referred to as probability games. *See id.* Prior art probability games involve games in which every game ticket is a potential winner. *See id.* Each game includes a number of concealed selections. *See id.* To play the game, an individual uncovers a specified

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number of the play areas to reveal the symbols beneath them. *See id.* The player then determines whether the combination of revealed symbols results in a winner. *See id.* A winning game may exist where all of the symbols are the same, add up to, or represent a winning combination. *See id.*

In particular regards to the claimed invention, *Kamille* discloses that each game piece contains a number of areas which are either void or win areas. *See col. 3:59-4:3.* In this way, the group of game pieces include guaranteed winners, guaranteed losers, and potential winners and in which the outcome is controlled by the laws of probability through player-made choices with respect to selecting areas to uncover on the game pieces that present winning indicia. *See id.* Hence, *Kamille*, ^{provides} a gaming device that determines whether to assign an item to at least one, a plurality of, or all of the plurality of symbols and, upon said determination being made, assigns the item to one of said symbols, to a plurality of said symbols, or all of said symbols. *See col. 5:21-49, 6:18-23, 7:17-43.* *Kamille* suggests varying the number of winning outcomes in a selection game provides control over the game's total payout and thereby limits the operator's liability. *See col. 2:11-59, 3:3:52-56, 16:25-42.*

In view of *Kamille*, it would have been obvious to an artisan to modify the selection game disclosed by *Barrie*, wherein symbols are assign a predetermined number of items, to add the feature of determines whether to assign an item to at least one, a plurality of, or all of the plurality of symbols and, upon said determination being made, assigns the item to one of said symbols, to a plurality of said symbols, or all of said symbols. As suggested by *Kamille*, the modification would enhance the game by varying the number of winning outcomes to control over the game's total payout and thereby limits the operator's liability. *See col. 2:11-59, 3:3:52-56, 16:25-42.*

Regarding claim 2: *Barrie* additionally teaches having the controller assign an item to a plurality of symbols in each round. *See fig. 3-9, p. 1:55-69, 3:1-19.*

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Regarding claim 22: *Barrie* additionally teaches revealing that a symbol has an assigned item when the player selects a symbol having the assigned item. *See id.*

Regarding claim 23: the multi-round gaming device suggested by *Barrie* describes all the features of the instant claims except revealing that all symbols having an assigned item indeed have an assigned item. Regardless of the deficiency, the feature was known in the art at the time of the invention and would have been obvious to an artisan. It is notoriously well known in the art to reveal unselected selections from a set of hidden selections to demonstrate that a selection associated with an item actually existed. Revealing unselected items assures players that the game is not a scam such as a “Shell Game” or “Three-Card-Monty” wherein there is actually no winning outcome. Furthermore, revealing unselected items serves to entice players by satisfying their curiosity in forgone possibilities. Thus, in multi-round gaming device described by *Barrie* in view of *Kamille*, wherein players select items hidden behind a plurality of symbols, it would have been obvious to an artisan at the time of the invention to reveal that all symbols having an assigned item indeed have and assigned item to demonstrate the game is not a scam and entice players into further attempts by revealing the forgone selections. The modification would enhance the gaming device by increasing players’ feelings of fairness and excitement and thereby increase operator revenue.

Claims 3, 4, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Barrie* in view of *Kamille*, as applied to claims 1 and 2 above, in further view of Demar et al., U.S. Patent 6,203,429 B1 (Mar. 20, 2001).

Regarding claim 3: The gaming device suggested by the combination of *Barrie* in view of *Kamille* describes all of the features of the claim except selecting the items from a table. *Demar* teaches a gaming device in which items are randomly selected from a table. *See fig. 13(a,b), 14, 15.* By arranging

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the items in a table, the device provides a means to associate the item with another value. For example, figure 13(a) illustrates a table associating items with probabilities wherein each item has a different probability of occurring. In view of *Demar*, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the gaming device suggested by the combination of *Barrie* in view of *Kamille*, wherein different items are randomly associated with selections, to add the feature of selecting the items from a table. As taught by *Demar*, the modification would enhance by provides a means to associate the item with another value and thereby controlling probability of occurrence of each item.

Regarding claim 4: *Demar* additionally teaches a table of randomly selectable items wherein at least one item is adapted to be randomly selected more often than another item. *See fig. 13(a)(b), 14, 15.*

Regarding claim 11: *Demar* additionally teaches a table of randomly selectable prizes. *See fig. 15, 18.*

Regarding claim 12: *Demar* additionally teaches a table of randomly selectable prizes wherein at least one prize is adapted to be randomly selected more often than another. *See id.*

Claims 14, 17 and 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Barrie* in view of *Kamille*, as applied to claims 1 and 2 above, in further view of Yoseloff et al., U.S. Patent 6,427,208 B2 (Oct. 29, 2002).

Regarding claims 14, 17 and 24: The gaming device suggested by the combination of *Barrie* in view of *Kamille* describes all the features of the instant claims except selecting the number of rounds the player has in the selection game.

Yoseloff describes an analogous gaming device having multiple rounds in which the number of rounds the player has in the game is randomly determined prior to initiating the game. *See col. 4:36-50*. As a result, the length of the game is limited without being predictable by the player. In view of *Yoseloff*, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the gaming device suggested by the combination of *Barrie* in view of *Kamille* to add the feature of employing a table of numbers to designate the number of rounds the player has in the selection game. As taught by *Yoseloff*, randomly determining the number of rounds prior to initiating a game allows operators to limit the length of the game without being predictable by the player. As a result, operator's revenue will be preserved while enhancing the enjoyment of players.

In regards to claim 25, *Barrie* additionally teaches selecting a prize. *See fig. 2; p. 1:48-54, 2:6-22*.

In regards to claim 26, *Barrie* additionally teaches providing the prize to the player if the player chooses a symbol having an assigned item. *See id.*

In regards to claim 27, *Barrie* additionally teaches revealing that a symbol has an assigned item when the player selects a symbol having the assigned item. *See id.*

In regards to claim 28, the gaming device suggested by the combination of *Barrie* with *Kamille* and *Yoseloff* describes all the features of the instant claims except revealing that all symbols having an assigned item indeed have an assigned item. Regardless of the deficiency, the feature was known in the art at the time of the invention and would have been obvious to an artisan. It is notoriously well known in the art to reveal unselected selections from a set of hidden selections to demonstrate that a selection

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associated with an item actually existed. Revealing unselected items assures players that the game is not a scam such as a “Shell Game” or “Three-Card-Monty” wherein there is actually no winning outcome. Furthermore, revealing unselected items serves to entice players by satisfying their curiosity in forgone possibilities. Thus, in multi-round gaming device suggested by the combination of *Barrie* in view of *Kamille* and *Yoseloff*, wherein players attempt to select items hidden behind a plurality of symbols, it would have been obvious to an artisan at the time of the invention to reveal that all symbols having an assigned item indeed have and assigned item to demonstrate the game is not a scam and entice players into further attempts by revealing the forgone selections. The modification would enhance the gaming device by increasing players’ feelings of fairness and excitement and thereby increase operator revenue.

Claims 5-10 and 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Barrie* in view of *Kamille* and *Demar*, as applied to claim 3 above, in further view of *Yoseloff*.

Regarding claims 5, 15, 18, 20: The combination of *Barrie* with *Kamille* and *Demar* describes all the features of the instant claims except employing the table of numbers to designate the number of rounds the player has in the selection game.

Yoseloff describes an analogous gaming device having multiple rounds in which the number of rounds the player has in the game are randomly determined prior to initiating the game. *See col. 4:36-50*. As a result, the length of the game is limited without being predictable by the player. In view of *Yoseloff*, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the gaming device suggested by the combination of *Barrie* with *Kamille* and *Demar*, wherein different items are randomly selected from a table, to add the feature of employing a table of numbers to designate the number of rounds the player has in the selection game. As taught by *Yoseloff*, randomly determining the number of rounds prior to initiating a game allows operators to limit the length of the game without being

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predictable by the player. As a result, operator's revenue will be preserved while enhancing the enjoyment of players.

Regarding claims 6 and 16: *Demar* additionally teaches a table of randomly selectable items wherein at least one number is adapted to be randomly selected more often than another number. *See fig. 13(a,b), 14, 15.*

Regarding claim 7: *Demar* additionally teaches a plurality of tables of numbers. *See id.*

Regarding claim 8: *Demar* additionally teaches a table of randomly selectable items wherein at least one number is adapted to be randomly selected more often than another number. *See id.*

Regarding claim 9: *Demar* additionally teaches the gaming device suggested by the combination of *Barrie* with *Kamille* and *Demar* and *Yoseloff* teaches all the features of the claim except having the a quantity of tables of numbers equaling the quantity of symbols in a round. Regardless of the deficiencies, these features were known in the art at the time of the invention and would have been obvious to an artisan. *Demar* describes a gaming device in values for some items are randomly selected from a table providing a means to associate the item with another value such as an occurrence rate in order to provide a variable outcome. *See fig. 13(a)(b), 14, 15.* In view of *Demar*, it would have been obvious to an artisan at the time of the invention to modify the gaming device suggested by the combination of *Barrie* with *Kamille* and *Demar* and *Yoseloff*, wherein outcomes are randomly distributed, to add the feature of having the a quantity of tables of numbers equaling the quantity of symbols in a round to provide a variable outcome for each item and thereby enhance players' enjoyment by making the game less predictable.

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Regarding claim 10, *Demar* additionally teaches a table of randomly selectable items wherein at least one number is adapted to be randomly selected more often than another number. *See id.*

Regarding claim 21: *Barrie* discloses changing the probability of selecting a winning symbol in each round. Hence, the gaming device suggested by the combination of *Barrie* with *Kamille*, *Demar* and *Yoseloff*, wherein the number of rounds and/or item probability is selected from a table, it would have been obvious to an artisan for the selected number of rounds each being associated with a different percentage of symbols having an assigned item.

Allowable Subject Matter

Claims 29-33 are allowed.

Response to Arguments

Applicant's arguments with respect to claims 1-²⁸~~32~~₄₄ have been considered but are moot in view of the new grounds of rejection.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Ashburn whose telephone number is 703 305 3543. The examiner can normally be reached on Monday thru Friday, 8:00 AM to 4:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9302 for regular communications and 703 872 9303 for After Final communications. Any inquiry of a general

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nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1148.

s.a.

October 28, 2003



MARK SAGER
PRIMARY EXAMINER